

Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024

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Submission

on the

CRIMINAL CODE (DECRIMINALISING SEX WORK) BILL 2024

By FamilyVoice Australia

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FamilyVoice Australia is a national Christian voice – promoting true family values for the benefit of all Australians. Our vision is to see strong families at the heart of a healthy society: where marriage is honoured, human life is respected, families can flourish, Australia’s Christian heritage is valued, and fundamental freedoms are enjoyed.

The background to these proposed legislative changes, explains that

The objective of the Criminal Code...is to establish a legal framework that will enact a safe, decriminalised sex work industry in Queensland, while improving the health, safety, rights and legal protections for sex workers.

1. Legalised Prostitution:

Prostitution has no valid social purpose. Prostitution involves the purchase and sale of sex. This is a profoundly anti-family and anti-social activity.

Men who purchase sex are either married or potential husbands. Purchasing sex damages their capacity to be good husbands by encouraging them to see women as sexual objects, who can be paid to perform as required with little or no regard for their emotions or their dignity as women, as human beings of equal value and worth.

Every prostitute is someone's daughter. No little girl grows up thinking "I hope to be a prostitute" one day. No one – including prostitutes and madams – wants their daughter to grow up to be a prostitute.

Girls and women become prostitutes mostly because they are already harmed through sexual or other abuse, through drug addiction or being exploited by a dominant male who pimps them.

Others may simply see prostitution as an apparently easy way to make large amounts of cash quickly. In either case prostitution exploits women and profoundly hurts them.

The Oxford Dictionary defines the verb 'exploit' as meaning to utilize a person to one's own ends.

In prostitution the prostitute – a human person, most frequently a woman – is exploited both by the man who uses her as a sexual object and by the brothel owner who pimps her.

Prostitution is more like slavery than like work. In valid, non-exploitative work, the worker exchanges her labor and her talents for reasonable remuneration.

In slavery the very person of the slave is at the disposal of the master. Slavery – even voluntary slavery – is banned. It is not lawful for persons to freely sell themselves into slavery. This is considered to be against human dignity. It threatens the liberty of all and leaves the poor and weak vulnerable to exploitation.

Similarly in prostitution the 'client' 'buys' the woman's body for a fixed period of time. The brothel owner or pimp profits from this sale. This necessarily involves a demeaning and degradation of the woman who must suppress her natural human feelings to allow a man she has no affection for or interest in to use her body as he pleases.

Legalizing prostitution necessarily legalizes the exploitation of women by pimps and buyers of sex.

2. Prostitution in New Zealand:

The New Zealand *Prostitution Reform Act*, repealing almost all laws against the prostitution trade, was passed by one vote in 2003. A committee reviewing the operation of the act in 2008 found it was working well – but the MPs on the committee had all voted for the bill in 2003. The committee's report has been criticised for ignoring evidence of problems with the new law.ⁱ

FamilyVoice Australia representatives visited Christchurch in September 2012 and spoke to Deputy Mayor Ngaire Button about the experience of the Christchurch City Council in regulating the NZ prostitution law.

FamilyVoice issued a media release on 13 September 2012 about the interview:

Christchurch warning to SA ratepayers on prostitution costs

Ngaire Button, Deputy Mayor of Christchurch, New Zealand, has issued a blunt warning to South Australians, whose parliament is debating a bill to decriminalise prostitution.

She said Christchurch has been going through tough times since huge earthquakes wrecked the CBD. But New Zealand's Prostitution Reform Act 2003 – basically the same as SA MP Steph Key's Sex Work Reform Bill – has only added to the city's problems, including financial problems.

Ms Button spoke to FamilyVoice Australia leaders who were visiting Christchurch last week.

She said: "It's really hard to get somebody that's employed to do traffic enforcement and enforce conditions on resource and building consents to go out and do enforcements around brothel compliance. It's a specialised skill. What we've found is that this whole thing has taken up so many resources. And who's paying? The ratepayer!"

"This bill (South Australian Sex Work Decriminalisation Bill 2013) will have an impact on rates, on the efficiency of how cities run, because it is staff time and not police time. The sex industry ... because it is so fraught with so many criminal facets, it really is a law and order issue, not a local government issue. A parking officer who enters a brothel wouldn't know what to look out for.

"Our staff have spent hours, weeks, months, over the last few years trying to manage prostitution in the city. We had 300 submissions from various groups in the city about signage. We had a big stack of submissions, hundreds – asking us not to allow brothels in their area. We can't do anything about street prostitution," she said.

"The street walkers fight about possession. They yell at each other across the road and argue, make a racket, and the cars are stopping ... and there's the mess in people's yards, because there are no toilets. So they've been using people's yards as toilets. Then there's the condoms and needles and other things in people's front yards and around the property and on the streets. And husbands being solicited in their driveway as they come home from work.

"Pimping has been an issue too. A council colleague has been to Manchester Street to talk to some of the girls. There are guys behind them with baseball bats. The exploitation has caused great problems with drug addiction."

Ngaire Button said that the Christchurch Council had tried to limit the placement of brothels, but was taken to court by a man who owned three brothels. The council lost the case. "It cost ratepayers \$100,000. It's put a huge burden on us to manage brothels within the city," she said.

She was not aware of any prostitute murders before the sex industry was decriminalised in 2003. Since that time, three Christchurch sex workers have been murdered. "Yet the law was supposed to make it safer," the Deputy Mayor said.ⁱⁱ

The Auckland City Council was so concerned about out-of-control street prostitution that it published a special 18-page booklet in May 2012. *The Street Prostitution Industry in the Southern Communities of Auckland: The Need for Legislative Control to Reflect the Intent of the Prostitution Reform Act* included first-hand accounts by ratepayers of the many problems – including repeatedly replacing damaged street signs that sex workers had climbed in order to hail passing cars! The council (unsuccessfully) sought amendments to the law.ⁱⁱⁱ

3. Prostitution in NSW:

Following a massive police corruption scandal in the 1990s, NSW prostitution law was dramatically reformed and a decriminalisation model was adopted. As the focus was on police cover-ups of illegal brothels and prostitution, significant power was given to councils.

A 2012 NSW prostitution issues paper describes these new laws:

The Disorderly Houses Amendment Act 1995 legalised brothels and living off the earnings of a prostitute. The Act also amended the Summary Offences Act 1988 and Crimes Act 1900 to abolish the common law offence of keeping a common bawdy house or brothel and related common law offences. With the passage of the legislation, operating a brothel became a legitimate commercial land use subject to approval under planning laws in much the same way as any other business. Local councils became the determining authority of where such premises could be located and well-run brothels were no longer the concern of police.^{iv}

But the *Sydney Morning Herald* reports that these changes have resulted in another “nightmare” – councils like Hornsby Council have spent over \$100,000 to shut down just one illegal brothel and failed. Incredibly, the evidence Hornsby Shire Council obtained to prove a business was operating as a brothel involved a private investigator actually having sexual intercourse with a prostitute – but the courts required evidence of two or more prostitutes.^v

Hornsby Councillor Nick Berman is aghast:

To have to invest ratepayers' money to pay private investigators to have sex with prostitutes is, in itself, ludicrous. But to now have to send two, three, even four men in is bordering on the unbelievable.^{vi}

After this case, some private businesses that councils rely on to gather evidence on illegal brothels are now questioning their ability to meet the high bar required for successful action.^{vii}

Even back in 2010 some councils found they were powerless, as the *Daily Telegraph* reported:

Acting Lord Mayor of Parramatta, Mike McDermott, agreed councils did not have the ability to stop the spread of brothels: "We've been powerless to stop [illegal] brothels starting up in our area."

Mr McDermott has been unable to limit the 20 brothels in his area alone.^{viii}

The reliance on private investigators is very strong in NSW, owing to the lack of power the NSW laws give:

Authorities have very limited power to access premises without a court order, so many are forced to pay private investigators to go undercover and report back with their evidence — in highly graphic, forensic detail.

John [a brothel buster] says his reports can run for up to three pages. Dates, times, people, places. Who, what, when, where, how much.

“It’s a document that will be used in court, so it has to be pretty detailed and very accurate. It’s not something you can waddle off in a couple of minutes,” he says.

Lachlan Jarvis, managing director of private investigation firm Lyonswood, says roughly 10-12 councils around the state engage undercover sex investigators, and only in NSW.^{ix}

The lack of power and control has prompted rapid growth of the new legal sector but also the illegal sector, prompting this damning headline in 2010: “Sydney has become the Amsterdam of the South Pacific” with “at least 10,000 sex workers in NSW”.^x

On top of this proliferation of prostitution, the original aim of reducing corruption has not been effective. As most power has shifted to councils, they are now being bribed by illegal brothel owners to keep quiet. A 2012 court case found Hornsby Shire Council’s building inspector “guilty of five counts of corruptly receiving a benefit”.^{xi}

If the inquiry chair, Alister Henskens, wants to “(close) loopholes,” total reform is needed.^{xii}

Numbers of brothels and prostitutes

Prostitution has exploded in size since decriminalisation, as a confidential 2010 report shows:

A confidential NSW Government document reveals Sydney alone has more than double the number of legal brothels than in the whole of Victoria and Queensland combined.

In Sydney alone, there were 244 legal brothels, with a further 90 complaints about "suspected" illegal brothels. By comparison, all of Victoria has just over 90 legal brothels, while Queensland has 24.

In total, NSW has 271 legal brothels, including full-service and "happy ending" massage brothels. ...

What is more alarming is that these numbers may be just the beginning. Just 56 of the state's 152 councils – or just over a third – responded to the survey by the NSW Government. The state's other 96 councils refused.

The statistics show 150 illegal brothels operate in the state, with hundreds more believed to be going unreported. Several industry figures estimate that there are at least 10,000 sex workers in NSW alone – putting the state on a par with Amsterdam.^{xiii}

Assuming that the two-thirds of councils that didn’t respond to the survey had a similar number of legal brothels, NSW has roughly 800 legal brothels – almost ten times Victoria and Queensland combined – in addition to “hundreds” of illegal brothels.

Level and nature of crime

The decriminalised NSW sex trade is out of control despite several amendments to tighten the law since 1995.^{xiv} In 2000 the then NSW Police Commissioner, Peter Ryan, said there had been 40 shootings in Sydney's south-west suburbs in a three month period – all part of a “struggle between rival groups for control of the drugs and prostitution trades in parts of Sydney.”^{xv}

Former federal police officer Chris Payne said that, based on evidence he had seen, there were hundreds of trafficked Asian women being exploited in NSW brothels every day. He said, “On the scale we were seeing in Sydney, we used to hear some estimates of anything up to 500 (Asian) women illegally in Sydney at any given time on false papers, working in these brothels.”^{xvi} As *Four Corners* indicated in 2011, this problem remains unresolved.^{xvii}

Conclusion:

NSW's decriminalised model was fatally flawed to begin with. It has allowed rampant and uncontrollable increase in prostitution, criminal activity, and health and safety concerns.

The NSW model doesn't just have “loopholes:” it has fostered large increases in trafficking, violence against women, and prostitution generally.

4.The Queensland Licensing Model:

Queensland introduced a licensing (partial legalisation) model through the *Prostitution Act 1999*. This aimed to:

1. ensure quality of life for local communities;
2. safeguard against corruption and organised crime;
3. address social factors which contribute to involvement in the sex industry;
4. ensure a healthy society;
5. promote safety.^{xviii}

Numbers of brothels and prostitutes

Very few legal brothels are active in Queensland. The Prostitution Licensing Authority records only 20.^{xix}

In terms of the success of moving the trade into the legal sector, the University of Queensland School of Law Human Trafficking Working Group found the illegal trade was booming:

The spirit of the Prostitution Act 1999 (Qld), which is to draw as many of the illegal operators and workers as possible into the legal industry, has clearly failed.

90% of prostitution remains unregulated in this state and most sex workers continue to work outside the regulated industry.^{xx}

The *Brisbane Times* also reports:

Contributing to the relatively high levels of illegal prostitution was the fact prosecutions and convictions of offenders were few and far between. LNP Member for Buderim, Steve Dickson, said legal brothel operators had told him that illicit sex rings were so common they were squeezing out the legal, tax-paying businesses.^{xxi}

Health and safety of prostitutes

The Crime and Misconduct Commission (CMC) reports that even under a licensing model, prostitution is inherently violent:

Much national and international research has shown that female sex workers suffer high levels of violence, endorsing the view that violence is an inherent risk of the job (Woodward 2003). Research reveals that reported rates of physical or sexual violence among sex workers range from 65 to 94 per cent (Farley & Barken 1998; Hotaling & Farley 1995; Miller & Schwartz 1995; Millman 1980; Ward & Day 1999).^{xxii}

Such high rates of violence challenge assertions that prostitution can be treated like any other job.

Sexually transmitted infections (STIs)

Even in a highly regulated system, a person can contract a sexually transmissible infection from a single sexual act and then pass that disease on to the very next person they have sex with. In the case of prostitutes, it is not feasible to have a medical check-up between each client. In any case many STIs cannot be diagnosed until sometime after infection, even though the person is already infectious.

Panic buttons

The presence of “panic buttons” and “panic rooms” in legal Queensland brothels indicates that their business is far from normal, and there is a significant risk that some customers will be abusive.^{xxiii}

Regulation of health

There is no evidence that a semi-legalised prostitution trade has improved the health of those providing sexual services. As noted by the Queensland School of Law:

Given the unregulated and often clandestine provision of prostitution services outside licensed brothels, it is difficult to make conclusive observations about the health of sole operators. While their services are legal, their sexual health is not monitored and, specifically, there is no requirement for them to be tested regularly and to hold and/or display sexual health certificates. This issue has been the subject of fierce debate, but there seems to be general consensus that the introduction of mandatory health checks for sole operators remains difficult – if not impossible – to introduce, monitor, and enforce.^{xxiv}

Level of crime

As discussed above, the overwhelming majority of the prostitution trade occurs outside the bounds of the law. Therefore, the model is powerless to curtail the serious criminal activities associated with brothels, such as: child trafficking, exploitation of women and men, sexual violence, and sexual servitude.

Links to organised crime

Organised crime in Queensland is closely connected with the prostitution trade, in both its legal and illegal forms. This is evident from the 2004 report of the Queensland Crime and Misconduct Commission, which states:

At least 40 per cent of sex workers surveyed by the CMC, including both legal and illegal workers, indicated that they had been affiliated with members of organised crime groups at some stage during their career in the sex industry, two-thirds stating that this had occurred since the implementation of the Prostitution Act in 2000. A range of activities, such as importing and selling drugs, illegal immigration, child prostitution, dealing in stolen property and, of course, running illegal brothels and escort agencies, were reported. Legal brothel licensees also voiced a few concerns. ^{xxv}

Human trafficking

The CMC 2004 review of the operation of Queensland's *Prostitution Act 1999* found that the current model, among other things, led to:

- implied "normalisation" of prostitution and expansion of the industry,
- increased sex-trafficking of women and
- increased child prostitution.^{xxvi}

Residential disturbances

Residents close to brothels often experience unpleasant disturbances at all hours of the day and night. For example, a Victorian town planner who moved to Queensland found the problems associated with a massage parlour next to his home so great that he was forced to move:

In my own situation, the clients of my neighbour would arrive at all hours and many during the early hours of the morning. They would start their meeting off inside and then hang around in the back yard, and whatever else they were doing would often be associated with being quite rowdy. For months, two to three nights mid-week, I was kept awake or awoken in the wee hours of the morning, to the voices of strange men, loud bands and clangs, bursts of music and spontaneous outdoor entertainment activities. The unpredictability, together with over hearing certain threatening conversations and bangs in the night, left me feeling quite vulnerable and generally disempowered and unsafe in my own home.^{xxvii}

Control over illegal sector

With over 90% of prostitution operating outside of Queensland's licensing model, the government has little control over the situation, as evidenced by the above report.

Conclusion

Queensland has seen a normalisation and expansion of the prostitution industry with authorities having very little control over it.

Victoria's licensing model

Victoria's current version of partial decriminalisation (licensing) is similarly flawed, with disturbing reports on the level and nature of crime. Full decriminalising of prostitution will only make a bad situation much worse.

Level and nature of crime

The 2012 NSW Prostitution Issues Paper says that the legalised model in Victoria provides little help with respect to trafficking:

With the licensing system in Victoria, the expectation might be that the fit and proper person test for owners and operators would preclude trafficking offences taking place in licensed brothels. However, an inquiry by the Victorian Parliament's Drugs and Crime Prevention Committee in 2010 found that "[t]here is a clear and close connection between sex trafficking and the legal and the unregulated sex industry". The report noted that nearly all cases of trafficking or sexual servitude that have reached the courts in Australia were originally discovered in legal sex services premises (including the three cases of sexual servitude to date before Victorian courts, which all concerned legal brothels). The report cited research suggesting that Australian Federal Police investigators have detected trafficking cases in both legal and illegal sex services premises, and that "this distinction has little relevance from the perspective of investigating trafficking".^{xxviii}

The Age has reported on Chinese organised crime syndicates that are running multi-million dollar prostitution rackets across Melbourne, bribing officials and exploiting poor regulation:

The syndicates are linked to human trafficking and arrange for dozens of Asian women to travel from interstate and overseas – often on student visas – to work in brothels. In several instances, figures linked to the illegal prostitution syndicates – including Mulgrave woman Xue Di Yan – are also licensed by the Victorian government to run legal brothels.^{xxix}

Where brothels are legal, traffickers are more easily able to recruit women for sexual servitude. For example, a Korean pimp was reported to have used this approach:

The broker lured the women, saying that they could work without risk, since prostitution is legal in Australia, and make big money. He introduced 25 women to brothels in Melbourne and Sydney since 2007.^{xxx}

Once the women arrive, pimps evade authorities by moving their captives from brothel to brothel and even interstate.

The US State Department has drawn attention to the link between legalised prostitution in Australia and trafficking for sexual servitude since 1999:

Trafficking in East Asian women for the sex trade is a growing problem. Immigration and federal police have developed profiles and identified trends in the industry, but lax laws – including legalized prostitution in parts of the country – make enforcement difficult at the working level.^{xxxi}

A legalised sex trade has created a prostitution boom in Australia with a high demand for women and children from Asia – without making them safer.

According to the business research company IBISWorld, the Australian sex industry has ballooned over the past decade. High growth has forced pimps to forge international supply routes to source their "product," which, in the case of the sex industry, is mostly women and children. Asian women in particular are a consumer favourite.

Legalisation has not made women safer. A 1998 study found 40 per cent of clients do not use condoms. In 2011 a woman in a Blackburn brothel was threatened by a client with a gun after she refused sex acts without a condom.^{xxxii} Former prostitute Simone Watson says legal brothels claim to enforce condom use, but workers who refuse client demands are often dismissed.^{xxxiii}

Three academics who interviewed women in legal brothels in 2011 found that “physical safety” was one of their biggest concerns.^{xxxiv}

Other evidence regarding full or partial legalisation models

Legalisation disempowers police

The problems associated with a legal prostitution trade have a long history, as Professor Eileen Byrne's submission to the Queensland Criminal Justice Commission Inquiry into Prostitution Laws in 1991 shows:

In London, we found both in the 1960s and the late 1970s that only when there was a hard crackdown on brothels and other organised forms of prostitution, could we cut back the traffic in young boys and girls and help social welfare agencies to get young people aged 12-20 out of the system. Public tolerance or a legal blind eye created increased traffic in the innocent and the vulnerable...

The rescue of the young is often less possible under a legalised prostitution system. Evidence not only from international committees of inquiry, but from social welfare agencies who work across European country boundaries, shows a consistent pattern in Europe of a poor history of police-welfare attitudes towards young prostitutes of under 18 who attempt to leave the system...

We could not have acted to close the London brothels, break the syndicate and discover and rescue the girls, without the sanction of the illegality of prostitution. We must have the law on our side.^{xxxv}

In March 2011, police in Canberra admitted they had limited ability to investigate children working in legalised brothels:

Canberra's prostitution laws leave police almost powerless to rescue children from sexual exploitation in brothels, according to the territory's police chief.

More than two years after a 17-year-old girl died of a heroin overdose in a Fyshwick brothel, police say their ability to investigate children working in legal sex venues remains limited, weak and constrained.

Authorities are also worried that they remain almost completely in the dark about what goes on in the city's illegal sex-for-sale operations.^{xxxvi}

Police must be properly empowered if crime is to be reduced, and this can only occur when the prostitution trade is unlawful.

Legalisation is exploitative

Advocacy groups such as the Scarlet Alliance claim that decriminalisation of the sex trade would lead to greater safety and status for sex workers – but they ignore the reality that

prostitution would become a normal business where “the customer is always right” and “he who pays the piper calls the tune”.

Studies reveal that men who pay for sex believe that the payment entitles them to sex on their terms. In a series of interviews with clients (conducted by women employed by massage brothels) it was noted that, on the one hand they believed that commercial sex was a mutually pleasurable exchange, but on the other hand asserted that payment of money removed all social and ethical obligations. One client said: “It’s like going to have your car done, you tell them what you want done...”^{xxxvii}

Clients interviewed in research confirmed that the relationship in prostitution is one of dominance and subordination. One man stated that “prostitution says that women have less value than men... I paid for this. You have no rights.” Another client said: “Guys get off on controlling women... If you look at it, it’s paid rape... She has to do what you want.”^{xxxviii}

Twenty-seven percent of the interviewees in a 2009 London study explained that once he pays, the customer is entitled to engage in any act he chooses with the woman he buys. Forty-seven percent expressed the view to a greater or lesser degree that women did not always have certain rights during prostitution.^{xxxix}

Legalisation increases human trafficking

Citing a UN Save the Children report, the UK Home Office said in 2004 that:

Victoria and New South Wales were the two worst states for the abuse of children through prostitution. The trafficking of East Asian women for the purpose of prostitution was also found to be a growing problem.^{xl}

A 2012 international study of the effect of legalising prostitution on human trafficking found that the net effect was increasing human trafficking inflows.^{xli} *The Guardian* reported:

In the European countries where it’s been tried, it has largely failed to bring the industry out of the shadows and improve life for sex workers. Legalising prostitution seems to increase demand, which in turn increases trafficking. A 2012 paper in the journal World Development found: “Countries with legalised prostitution have a statistically significantly larger reported incidence of human trafficking inflows.”^{xlii}

The FamilyVoice Recommendation:

In the context of prostitution, the Nordic model which has been utilised extensively overseas, has shown a lot of positive outcomes. In this context,

Australian academic, Dr Helen Pringle’s, submission to the European Parliament was cosigned by a global network of nearly 100 academic researchers into the prostitution and sex industries, with expertise covering empirical and practice-based evidence as well as conceptual and historical perspectives on prostitution. The Nordic model works in upholding the human rights of women, whether they are currently in the prostitution system, survivors of the system, or women affected by it.^l

^l https://www.troubleandstrife.org/wp-content/uploads/Honeyball_support_letter_FINAL.pdf

Conclusion:

Legalising prostitution in Qld is highly undesirable for these reasons:

*Firstly, every act of prostitution is hostile to the family, which is a pillar of every society. Any responsible government should always act to defend and protect it.

*Secondly, there are major health and safety concerns for prostitutes, some of whom have described what they are engaged to do as “paid rape.” Prostitution is a form of sexual servitude, with violence an inherent risk in the job. It is not safe, and unlike any other occupation, the CMC report indicates that “...prostitution is inherently violent.”

*Thirdly, prostitution is almost inevitably linked to organised crime, only beginning with crimes against women, who are not protected against abusive or violent men. As Professor Eileen Byrne reported to the Qld CJC in 1991, “...We must have the law on our side.”

*Fourth, the exploitation of women by trafficking for the sex industry is clearly linked to legalised prostitution in Australia. If the federal police officer Chris Payne, could claim that there are “...anything up to 500 (Asian) women illegally in Sydney at any given time on false papers, working in these brothels,” there is clearly an incentive to bring unauthorised girls and women to Australia. The evidence indicates it happens on a large scale.

*Fifth, legalised prostitution inevitably leads to the exploitation and abuse of under-age children, especially girls. Permitting this in any other context is a criminal offence.

What would be the best outcome? We accept the Nordic model, for the overseas evidence clearly serves to recommend this. It should lead over time, to a significant reduction in Qld’s prostitution, making it an offence for anyone to pay money for sex.

Endnotes:

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